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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 BRAILEY LANDRY, a minor, by and) Case No. 3:13-cv-00537-H-WVG
15 through her Guardian Ad Litem, Jeanna)
16 Mealer; and JENSEN LANDRY, an) **PETITION TO APPROVE**
17 individual,) **COMPROMISE OF DISPUTED**
18) **CLAIM OF MINOR**
19 Plaintiffs,)
20 vs.)
21 THE UNITED STATES OF AMERICA,)
22 Defendant.)

23
24 Petitioner, Jeanna Mealer, Guardian Ad Litem for Plaintiff, BRAILEY
25 LANDRY, a minor, hereby petitions this Court for approval of the compromise of
26 BRAILEY LANDRY's claim in this action. This petition is based on the following
27 information:

- 28
1. **Petitioner:** Jeanna Mealer, Guardian Ad Litem for Plaintiff, BRAILEY LANDRY.
 2. **Plaintiff:** BRAILEY LANDRY.

1 a. **Address:** 231 Ada St., Blue Ridge, GA 30513.

2 b. **Date of Birth:** April 25, 2010.

3 c. **Age:** 3

4 d. **Sex:** Female.

5 e. **Minor:** Yes.

6 f. **Person with a Disability:** No.

7 3. **Relationship:** Petitioner is the maternal grandmother of the Plaintiff and
8 her Guardian Ad Litem in this action.

9 4. **Nature of Claim:** The claim of the minor is the subject of the action
10 captioned above, which will be compromised without a trial on the merits.

11 5. **Incident:** The incident occurred as follows:

12 a. On or about November 22, 2010, Bryce Landry, an enlisted
13 Marine, and Plaintiff, JENSEN LANDRY presented their infant child, Plaintiff,
14 BRAILEY LANDRY ("BRAILEY") to the emergency department of Camp
15 Pendleton Naval Hospital ("CP Hospital"), for medical treatment related to a
16 rash. BRAILEY was six months old.

17 b. Based upon information and belief and thereon alleged, while
18 treating BRAILEY, CP Hospital Staff negligently applied an inappropriate
19 medical device, referred to as an "OB/GYN light," to BRAILEY's right wrist
20 and left palm, in an effort to locate veins from which blood could be drawn,
21 thereby causing her significant burn injuries. Based upon information and
22 belief and thereon alleged, the device used was not intended for use in the
23 manner in which it was used upon BRAILEY, because of its propensity to
24 cause serious burns, among other reasons.

25 c. As an actual and proximate result of the application of the
26 OB/GYN light by CP Hospital Staff to BRAILEY's right wrist and left palm,
27 BRAILEY sustained serious injury, including second and third degree burns to
28 her skin, scarring, pain and suffering.

1 d. In addition, the medical device used to burn BRAILEY was
2 negligently supplied, placed and/or left in a location that significantly increased
3 the likelihood that it would be used for an improper purpose, causing injury, by
4 CP Hospital and/or CP Hospital Staff.

5 e. JENSEN LANDRY was in close proximity to and witnessed CP
6 Hospital's Staffs' negligent conduct which caused injury to her daughter,
7 BRAILEY, causing her emotional distress.

8 6. **Treatment and Recovery:** BRAILEY was treated for her burn injuries
9 at Camp Pendleton Naval Hospital at the time of the incident. The injury and scarring
10 to her left palm has resolved. **Exhibit A** is a recent photograph of the injury to
11 BRAILEY's right wrist. On November 22, 2011, BRAILEY was examined by
12 Michael L. Hoops, M.D. [See **Exhibit B**, Exam Note]. Dr. Hoops noted that
13 BRAILEY will always have a scar on her right wrist, but that it could be a "better
14 scar" through scar revision surgery. Dr. Hoops did not recommend the surgery at this
15 time, but rather in the future as BRAILEY ages. Dr. Hoops informed BRAILEY's
16 mother that the revision surgery will cost approximately \$800. BRAILEY has no
17 other injuries which are the subject of this action.

18 7. **Petitioner's Inquiry:** The Petitioner has made a careful and diligent
19 inquiry and investigation to ascertain the facts relating to the incident in which the
20 Plaintiff was injured; the responsibility for the incident; and the nature, extent, and
21 seriousness of the Plaintiff's injuries. Petitioner fully understands that if the
22 compromise proposed in this Petition is approved by the court and is consummated,
23 the Plaintiff will be forever barred from seeking any further recovery or compensation
24 from the settling defendants named below even though the Plaintiff's injuries may in
25 the future appear to be more serious than they are right now thought to be.

26 8. **Amount and Terms of Settlement:** By way of settlement, the
27 defendants named below have offered to pay the following sums to Plaintiff
28 BRAILEY LANDRY:

Defendant:**Amount:**

THE UNITED STATES OF AMERICA

\$12,850.00

The total settlement of this entire action is one lump-sum payment of **\$15,000.00** which includes \$12,850.00 payable by THE UNITED STATES OF AMERICA to Plaintiff, BRAILEY LANDRY and an additional \$2,150.00 payable by THE UNITED STATES OF AMERICA to Plaintiff, JENSEN LANDRY for her negligent infliction of emotional distress cause of action.

Petitioner is not a Plaintiff in this action and receives nothing in settlement.

9. **Medical Expenses:** BRAILEY's total medical expenses to be reimbursed out of the settlement sum is: **zero**.

10. **No Liens:** There are no liens on the recovery from this case. **Neither Medi-Cal nor Medi-Care paid any amount related to Plaintiff's injuries.** Plaintiff was and is insured by through TriCare, which is not asserting a lien in this action in accordance with 32 CFR 757.15.

11. **Plaintiff's Attorney Fees and Costs:** The total amount of attorney's fees and costs on the \$12,850.00 settlement amount to BRAILEY are as follows:

<u>Item:</u>	<u>Payee(s):</u>	<u>Amounts:</u>
Attorneys Fees (25% of \$12,850 per FTCA)	Janice F. Mulligan, A.P.C.	\$3,212.50
Costs Advanced (Itemization on Exhibit C)	Janice F. Mulligan, A.P.C.	\$ 662.35
Total Attorneys Fees and Costs:		\$3,874.85

(See Exhibit D, Attorney Fee Declaration).

1 12. Petitioner has paid no expenses of Plaintiff that require reimbursement.

2 13. **Net:** The net balance of the proceeds of the proposed settlement
3 remaining for Plaintiff BRAILEY after payment of all requested fees and expenses is:
4 **\$ 8,975.15.**

5 14. **Attorney Representing Petitioner:** Brian K. Findley, SBN: 251172,
6 Mulligan & Banham (dba of Janice F. Mulligan, A.P.C.), 2442 Fourth Ave., Ste. 100,
7 San Diego, CA 92101, (619) 238-8700.

8 15. **Other compensation:** To date, petitioner's attorney has not received
9 attorney's fees or other compensation in addition to that noted in this petition.
10 Petitioner's attorney also represents Plaintiff JENSEN LANDRY in this action and
11 expects to receive an additional **\$537.50** in attorney's fees (25% of \$2,150
12 settlement), and no additional reimbursement for costs advanced, in regard to that
13 representation.

14 16. **Disbursement of Settlement Proceeds:** There is no guardianship of the
15 estate of the minor. Petitioner requests that the balance of the proceeds of the
16 settlement be disbursed as follows: Plaintiff BRAILEY's net recovery of \$8,975.15
17 to be deposited by Petitioner's attorney into a blocked account, subject to withdrawal
18 only upon authorization of the court or by BRAILEY upon reaching the age of
19 majority, at the following financial institution in her state of residence: United
20 Community Bank, 182 Blue Ridge Dr McCaysville, GA 30555 (706) 492-5900.

21 17. **Request to Waive Appearance.** Petitioner respectfully requests the
22 court to waive her personal appearance and the personal appearance of Plaintiffs
23 BRAILEY LANDRY and JENSEN LANDRY at the hearing on this Petition, if any.
24 Petitioner and Plaintiffs presently reside in Blue Ridge, Georgia. Plaintiff BRAILEY
25 LANDRY is two years old. Plaintiff JENSEN LANDRY is approximately five
26 months pregnant. Traveling to San Diego would be a hardship for Petitioner and
27 Plaintiffs. Petitioner and Plaintiffs will make arrangements to appear by telephone or,
28 if available, by videoconferencing, if the court requests.

1 18. Petitioner recommends that the compromise settlement for the Plaintiff to
2 the court as being fair, reasonable, and in the best interest of the Plaintiff and requests
3 that the court approve this compromise settlement.

4
5 **Attorney:**

6 Dated: May 29, 2013

MULLIGAN & BANHAM

7
8 s/ Brian K. Findley _____

Brian K. Findley

9 Attorneys for Plaintiffs

10 Email: findley@janmulligan.com

11 **Petitioner:**

12 I declare under penalty of perjury that the foregoing is true and correct.
13

14
15 Dated: May ____, 2013

16 _____
Jeanna Mealer

17 Petitioner and Guardian Ad Litem for
18 Plaintiff, BRAILEY LANDRY
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16 Jeanna Mealer

17 Petitioner and Guardian Ad Litem for
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